IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 20091 of 1998

Between:

Smt.Qamar Sultana, W/o mahaboob Khan,
Mufeedul Anam, Boy's High School, Hyd.

..... PETITIONER

AND

1 Regional Director of Education, Hyderabad Region, Nampally, Hyd.
2 District Educational Officer, Twin Cities, Ehibition Ground, Nampally, Hyd.
3 Secretary, Mufid-ul-Anam, Boy's High School, Eithbar Chowk, Old City,

Hyd.
4 Amboja Rajagopal,
Mufid-ul-Anam, Boy's High School, Eithbar Chowk, Old City, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ petition order or direction more particularly in the nature of writ of mandamus declaring the impugned proceedings in Rc.5052/A1/97-1, dt.18-5-98, Rc.No.5852/A1/97-2, dt.18-5-98, issued by the respondent No.1 rejecting the promotion of the petitioner as Senior Asst. Grade-II, as illegal, improper, and consequently direct the respondents to promote the petitioner as Senior Asst. w.e.f. 1-4-91 with all service benefits and consequential benefits with retrospective effect i.e. from 1-4-91 by declaring the action of the respondents in not promoting the petitioner as illegal, improper, arbitrary and violative of Rules and regulations under seniority and promotion rules and also violation of Art.16 of the Constitution of India and also declare the promotion of the 4th respondent as illegal, improper

Counsel for the Petitioner:MR.ALI FAROOQUE

Counsel for the Respondent Nos.1 & 2: G.P. FOR SCHOOL EDUCATION

Counsel for the Respondent No.3 : MR.RUPENDRA MAHENDERA

The Court made the following :

ORDER:

The case of the petitioner is that she was appointed as Secondary Grade Teacher in the third respondent school with effect from 18-06-1970. She obtained B.Ed. degree in the year 1979, M.A. in english and social studies in 1990, and also passed account test for the post of Head Master in 1992. Further, she also passed M.A. literature in English. It is also asserted that she was teaching the high school section of the school i.e., 8th, 9th, and 10th classes all through right from 1982 onwards. The services of the petitioner were also appreciated by the third respondent and issued certificates of appreciation time and again. When one Smt.Sakina Banu retired on 01-04-1991, she claimed her promotion to the post of Senior Assistant in Humanities. However, the third respondent arbitrarily and illegally with ulterior motive promoted the respondent No.4 denying the promotion to the petitioner. The said respondent No.4 was junior to the petitioner and appointed only in the year 1972. The said promotion was made without approval of the Government and also while preparing the seniority list the petitioner objected for the promotion of the respondent No.4. Her proposal was also, however, sent to the authorities concerned after retirement of one A.Venkat Narayan (English, Social Studies) on 24-04-1992. But, no action was taken against the said proposal sent by the management, though five years elapsed. When she approached the D.E.Os. office, it was said that the records were burnt in a fire accident. Therefore, the petitioner made representations again and ultimately the impugned proceedings dated 16-01-1998 were passed. While the matter stood thus, the fourth respondent Smt.Amboja Rajagopal took voluntary retirement on 31-01-1999 and another school teacher Smt. Annapurna Devi, who was shown above the petitioner in the seniority list, also took voluntary retirement somewhere in the month of February 2000. In spite of that, the case of the petitioner was not considered for being promoted to the post of School Assistant (Social Studies), though several representations are filed by her. Now, it is stated that ultimately the petitioner attained the age of superannuation and retired on 31-05-2003 without being promoted to the post of School Assistant as per her eligibility.

Hence, this Writ Petition.

2. A detailed counter-affidavit has been filed by the Government on behalf of the first and second respondent and on behalf of the third respondent a separate counter-affidavit has been filed, denying the allegations made by the petitioner and sought dismissal of the writ petition. However, it is asserted by the respondent Nos.1 and 2 that Smt.Annapurna SGT, M.A., M.Ed. (Hum.) and petitioner in W.P.No.27373 of 1997 is senior to Qamar Sultana, SGT M.A., M.Ed., (Hum.). As such, the promotion of Smt.Annapurna, SGT, (Hum.) had to be considered by the respondent No.3 to the school Assistant (Hum.) before the petitioner-Smt.Qamer Sultana and other juniors as per the Hon'ble Court orders issued earlier. It is also further asserted that Smt.Rama Devi, SGT, having qualifications of B.Sc. (MPC), and B.Ed. is eligible for promotion to the post of School Assistant (Mathematics) in the existing post and the same has to be considered by the respondent No.3. The petitioner is not eligible for promotion to the post of School Assistant (Mathematics) as per the seniority and subject need/eligibility at that juncture. It is further explained in the counter that whenever a vacancy of senior assistant (regular) arises, the same has to be filled up with upgraded School Assistants and already existing should be earmarked for the subjects viz., first post in every three posts of School Assistant should be earmarked for graduate in Mathematics and Physcial Science, second post for natural science graduates and third post should be earmarked for graduate in humanities. As per the cadre strength posts admitted in grant-in-aid in the third respondent school, there are five School Assistant teachers working i.e., School Assistant (Maths) –1, School Assistant (Science) –2, School Assistant (Hum.) –2 one was vacant i.e., School Assistant (Maths.). As per the seniority of SGT and subject need as stated above, Smt.B.Rama Devi, SGT having qualifications of B.Sc. (MPC), B.Ed. is eligible for existing School Assistant (Mathematics) as per rules in force. The petitioner was appointed as SGT on 18-06-1970 and passed B.Ed. in May 1979, whereas the fourth respondent was upgraded to the post of School Assistant on 01-01-1976, since she acquired B.A., B.Ed., prior to 01-06-1977. Later she was absorbed in regular post of School Assistant with effect from 01-04-1991, in the vacancy arose due to retirement of Smt.Sakina Banu. Therefore, the petitioner was not considered by the respondent No.3 for upgraded School Assistant post.

3 . Almost the same stand was taken by the respondent No.3-management in its counter-affidavit.

4. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also gone through the material made available on record. As seen from the above, admittedly, the petitioner obtained B.Ed. only in 1979, whereas fourth respondent passed B.Ed. even before 01-06-1977 that is the reason why the fourth respondent though she was junior in service, adjusted in the upgraded post and thus became senior to the petitioner. Even Smt.Annuapurna Devi was senior in the cadre of S.G.B.T. Be that as it may, Ms.Amboja Rajagopal-the fourth respondent herein admittedly retired from service on 31-01-1999 and even if assuming that Smt.Annapurna Devi was promoted for the said vacancy, Smt.Annapurna Devi also took voluntary retirement in February 2000. At last, there was no hurdle in the way of third respondent in considering promotion of the petitioner for the post of Senior Assistant after February 2000. Of course, it is asserted in the counter filed by the respondents 1 and 2 that the first vacancy caused would go to the Science graduate and second vacancy would go to the graduate in Natural Sciences and the third vacancy would go to the graduate in Humanities. It is for the third respondent to look into this and pass appropriate orders. This exercise ought to have been done by the third respondent as soon as Smt.Annapurna Devi offered voluntary retirement in the month of February 2000, but such an exercise was not done by the third respondent. If any exercise has been done to fill up the vacancy caused due to voluntary retirement of Smt.Annapurna Devi in the month of Feburary, 2000, probably the case of the petitioner would have been considered.

5. In view of the above, the respondents are directed to consider the case of the petitioner against the vacancy caused due to the voluntary retirement taken by Ms. Amboja Rajagopal and consequently voluntary retirement taken by Smt.Annapurna Devi while she was in the cadre of School Assistant in the SGBT as to the feasibility of considering the case of the petitioner for being promoted to the post of School Assistant in Humanities, as per the vacancy position at that juncture, as per the procedure invoked and pass appropriate orders as per law and thereafter decide the pension etc., of the petitioner, since she has retired from service with effect from 31-05-2003, within a period of three months from the date of receipt of a copy of this order.

6. With the above direction, writ petition is disposed of. No order as to costs.

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C.V.RAMULU, J.

Dated 16-06-2005.

SKMR

..... REGISTRAR

To

1 Regional Director of Education, Hyderabad Region, Nampally, Hyderabad.
2 District Educational Officer, Twin Cities, Exhibition Ground, Nampally,

Hyd.
3 Secretary, Mufid-ul-Anam, Boy's High School, Eithbar Chowk, Old City,

Hyderabad.

4 2 CCs to G.P. for School Education, High Court Buildings, Hyderabad

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